Supreme Court, U. S.
MAY 17 1926
WM. R. STANSBURY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. 363

JUAN POSADAS, JR., AS COLLECTOR OF INTERNAL REVENUE, VICENTE CARAMONA, AS INSULAR TREASURER, BAS F. WEISSERT, AS INSULAR AUDITOR, AND THE METROPOLITAN WATER DISTRICT, *Petitioners*,

vs.

THE CITY OF MANILA, *Respondent*.

BRIEF OF RESPONDENT ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

ANTONIO BARTON,
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Counsel for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. 1173

JUAN POSADAS, JR., AS COLLECTOR OF INTERNAL REVENUE, VICENTE CARMONA, AS INSULAR TREASURER, BEN F. WRIGHT, AS INSULAR AUDITOR, AND THE METROPOLITAN WATER DISTRICT, *Petitioners*,

vs.

THE CITY OF MANILA, *Respondent*.

BRIEF OF RESPONDENT ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

The underlying dispute between the parties to this cause concerns the liability of the City of Manila to pay for water furnished by the Metropolitan Water District for municipal purposes. The direct issue in this case, however, is the jurisdiction and power of the Insular Auditor to settle that dispute by arbitrarily directing the diversion and payment to the Metropoli-

tan Water District of money in the Insular Treasury credited to the City of Manila as the City's share of the internal revenue collections, in which the Water District has no interest whatever.

It is unnecessary, therefore, to go into the merits of the dispute or the history of the water system of the City of Manila. The only questions presented by this petition are concerned with the power of the Insular Auditor, acting as an intermediary over the protest and objection of the City, to enforce a settlement, and the jurisdiction of the Supreme Court of the Philippine Islands to grant an injunction and writ of mandamus to prevent the interference of the Auditor.

It is sufficient, therefore, for the purpose of stating the issues in this case, to say that for many years the City of Manila operated a water system, deriving its authority from the old Spanish laws, from the acts of the United States Philippine Commission, and from the Act of Congress approved July 1, 1902; that in 1919, in view of the constant increase of the population and other considerations, the Philippine Legislature, by Act No. 2832, March 6, 1919, created the Metropolitan Water District, a public corporation, including within its territory the City of Manila and certain neighboring municipalities, and providing that the water district

> "shall own and control all the * * * water distributing systems of the City of Manila and all the municipalities comprising the District, and shall charge and collect a uniform rate for all services rendered, whether to any person, corporation, firm, governmental body, municipal entity, religious or charitable institution."

That since that time the Water District has furnished water to the City of Manila for municipal purposes; and that the City has refused to pay for such service claiming it is entitled to such service free of charge.

The Water District began furnishing water to the City in 1919, and has done so ever since. The dispute over payment has likewise continued ever since. In 1921 the Water District complained to the Insular Auditor who assumed jurisdiction and decided that the City was indebted to the Water District for the service furnished by the Water District. To enforce his decision the Insular Auditor thereupon directed the Collector of Internal Revenue to draw warrants in favor of the Water District against the City's apportionment of internal revenue collections in the Insular Treasury in settlement of the claim of the Water District against the City. The warrants were drawn and countersigned by the Auditor and the payments were made to the Water District and charged against the City's apportionment of the internal revenue collections. The Water District continued to furnish water to the City. The latter continued its refusal to pay for the service, on the ground that it was entitled to free service, and the Auditor continued to "enforce settlement" in the manner described.

January 8, 1925, the City instituted this proceeding in the Supreme Court of the Philippine Islands against the Insular Collector of Internal Revenue, the Insular Auditor, the Insular Treasurer, and the Metropolitan Water District, praying an injunction to restrain the continued drawing of warrants in favor of the Water District and the charging of such amounts against funds of the City and a writ of mandamus to require the Collector of Internal Revenue to draw and the

Auditor to countersign warrants in favor of the City for its share of the internal revenue collections.

The Supreme Court of the Philippine Islands granted a preliminary injunction and overruled a demurrer filed by the defendants, the Collector of Internal Revenue, the Auditor, the Treasurer, and the Metropolitan Water District. Thereafter an answer was filed by the defendants. The City demurred to the answer. After hearing argument the court sustained the City's demurrer to the answer, and—the defendants electing to stand upon their answer—directed that the injunction be made permanent and that a writ of mandamus issue requiring the Collector of Internal Revenue to draw in favor of the City, and not the Metropolitan Water District, all warrants in payment of the City's share in the internal revenue or other fiscal collections.

It is to review that judgment of the Supreme Court of the Philippine Islands that this petition for a writ of certiorari is sought.

THE QUESTIONS OF LAW

1. *Was Any Jurisdiction Vested in the Insular Auditor to Settle and Adjudicate the Dispute Between the City and the Metropolitan Water District?*

The Auditor relied generally upon section 24 of the Act of August 29, 1916, ch. 416, 39 Stat. 545, which provides:

> "Sec. 24. That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government and of the provincial and municipal governments of the Philippines, including

trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government or the Provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

He shall keep the general accounts of the government and preserve the vouchers pertaining thereto.

It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

* * * * * * *

"The administrative jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive."

* * * * * * *

"The decisions of the auditor shall be final and conclusive upon the executive branches of the government, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of the United States Treasury and is authorized to communicate directly with any person having claims before him for settlement, or with any department, officer, or person having official relations with his office."

And on section 588 of the Administrative Code, 1917, as amended by Act No. 3066, enacted in 1923, which provides:

> "The Insular auditor shall heve the power * * * to authorize and enforce the settlement of accounts subsisting between the different bureaus or offices of the Insular service; between any such bureau or office and any provincial, municipal, or city government; between provincial governments; between municipal or city governments; and between any such provincial and municipal or city governments."

In support of his assumption of jurisdiction under the last quoted section of the Administrative Code, 1917, he also relied on section 593 of the same law, which provides:

> "The provinces of the Philippine Islands, the chartered cities and the Metropolitan Water District, which shall be regarded as provinces, are hereby divided into twenty-two regular and one special auditing districts, and the Insular Auditor is hereby authorized to appoint a district auditor to each * * *. Said districts are hereby numbered, constituted, and established as follows:
>
> * * * * * * *
>
> Seventh: City of Manila and Metropolitan Water District."

The City contends, on the other hand, that the assumption by the Auditor of jurisdiction and power to adjudicate and enforce the settlement of this dispute between the City and the Metropolitan Water District was wholly without warrant or authority of law. In that contention the City has been upheld by the Supreme Court of the Philippine Islands.

The first objection to the assumption of jurisdiction by the Auditor is that the money in the treasury alloted to the City as its share of the internal revenue collections is public money constituting a special fund

for certain purposes, that is, for the use and benefit of the City, and can be paid out only pursuant to a legislative appropriation.

The act of August 29, 1916, ch. 416, 39 Stat. 545, provides:

> "That no money shall be paid out of the treasury except in pursuance of an appropriation by law. * * *
>
> "That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only."

And in section 8:

> "That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act." . .

The Administrative Code, 1917, enacted by the Philippine Legislature, provides for the disposition of internal revenue collections as follows:

> Sec. 490.—"*Disposition of internal revenue in general.*—Internal revenue collected under the laws of the Philippine Islands and not applied as hereinabove provided or otherwise specially disposed of by law shall accrue to the Insular Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment under the next succeeding section."
>
> Sec. 491.—"*Allotments of internal revenue for special purposes.*—Of the internal revenue accruing to the Insular Treasury under the preceding section there shall be set apart ten per centum as a provincial allotment, ten per centum as a road

and bridge allotment, and twenty per centum as a municipal allotment; but the amounts allotted to said several purposes during any year shall not be greater than the amount allotted for the same purposes during the fiscal year nineteen hundred and nine."

Sec. 492.—"*Apportionment and use of provincial allotment.*—The provincial allotment shall be apportioned to the treasuries of the several respective provinces and shall there accrue to their general funds, respectively."

Sec. 494.—"*Apportionment and use of municipal allotment.*—The municipal allotment shall be for the benefit of the inhabitants of the Islands in the purview of their community requirements, being available for municipal or other use as hereinbelow provided."

Sec. 495.—"* * * The City of Manila shall receive the shares which it would receive if it were both a municipality and a regularly organized province, and for the purposes hereof shall be deemed to be both the one and the other."

Sec. 497.—"*Warrants for quarterly payment of allotments.*—The payment of the internal-revenue allotments shall be made from the Insular Treasury quarterly, upon warrants drawn by the Collector of Internal Revenue."

It is clear that the City's share of the internal revenue collections is a share in public money which has been assessed and collected for governmental purposes. In so far as the City of Manila is concerned, its share of that money was assessed and collected for a specific purpose. It must be treated, therefore, as "a special fund in the treasury and paid out for such purpose only." To withdraw it or divert it for any other purpose (as here, for example, to direct its diversion to pay an alleged debt due from the City to a public corporation, notwithstanding the objection

and protest of the City) is contrary to the express direction of the Organic Act. An appropriation of the money in the Treasury to the credit of the City can only be made by the legislature of the Philippine Islands or the legislative body of the City of Manila, which is the Municipal Board created by sections 2439-2444 of the Administrative Code, 1917 (R. 60-61).

There is no claim or pretense that any appropriation has ever been made to pay the claim of the Metropolitan Water District, or even that there has been any adjudication of the asserted legal liability, except the decision and action of the Auditor complained of in this proceeding. Yet in legal effect the Auditor has undertaken to divert money which belongs to the City of Manila and which is in the treasury of the Philippine Islands, for the purpose of enforcing settlement of his decision. Neither the Auditor nor any other person has any authority of law to withdraw or divert money from the treasury for any purpose "except in pursuance of an appropriation by law." There is no claim or pretense that any appropriation has ever been made to pay the claim of the Metropolitan Water District against the City of Manila. As this court has said, in *Reeside* v. *Walker*, 11 How. 272, 291—

> "However much money may be in the treasury at any one time, not a dollar of it can be used in the payment of any thing not thus previously sanctioned. *Any other course would give to the fiscal officers a most dangerous discretion.*"

Neither section 24 of the Act of August 29, 1916, nor section 588 of the Administrative Code, 1917, quoted above, on which the Auditor relied, are authority for his action in undertaking to adjudicate a question of

legal liability between the City and the Water District, and to compel the payment of the "judgment" so rendered by directing the diversion of the money in the treasury already allotted to the city. The Auditor's action was plainly a usurpation of a judicial function and was wholly without warrant or authority of law.

A further objection to the assumption of jurisdiction by the Auditor of this dispute between the City and the Metropolitan Water District is that the decisions of the Auditor, although they may be in some cases in the exercise of a quasi-judicial function, are final and conclusive only upon the executive branches of the Government. The City of Manila is not an "executive branch" of the Philippine Government. It is a municipal corporation exercising executive, legislative, and judicial powers. The chief executive officer is the Mayor, who is appointed by the Governor General. The legisative body is the Municipal Board which consists of ten members who are elected by a direct vote of the people. Sections 2427-2468 of the Administrative Code, 1917 (Rec. 60-62).

There is nothing in the act of August 29, 1916, from which the Auditor derives his powers, which confers upon him jurisdiction of any kind, whether administrative or quasi-judicial, over a dispute between a municipal corporation, as the City of Manila, and a public corporation such as the Metropolitan Water District, to compel such a municipal corporation to pay an alleged debt by ordering a diversion of money held in the treasury for the use and benefit of the municipality. As the Supreme Court of the Philippine Islands said in its opinion in this case, "No authority has been cited, and none will ever be found to

legalize such a proceeding" (R. 73). On this decisive point, Justice Street, who concurred in the result although not agreeing with all that was said in the majority opinion, said:

> "The Insular Auditor certainly does not have the power to put his hands into the city treasury and take out money to pay its debts however meritorious the obligation; and if he does not have this power he cannot intercept and divert funds in course of transmission to the city."

A further objection to the assumption of jurisdiction by the Auditor is that the dispute between the City and the Water District is one which can only be settled satisfactorily by judicial process and determination. Among other defenses to the claim of the Water District the City contends that any title which the Water District may now have in and to the water system is held by the Water District in trust for the use and benefit of the City. That is an equitable defense on which the City has a right to be heard. The courts of law and equity are established for the purpose of settling such questions. Under their respective charters both the Metropolitan Water District and the City can sue and be sued. If the Metropolitan Water District has a valid claim against the City, that fact can be ascertained and determined in a judicial proceeding for that purpose, in the same manner as any other legal liability. If, as the City contends, the Water District holds the title to the water system in trust for the use and benefit of the City, that fact can also be determined in the same manner and in the same proceeding. It would be a gross perversion of justice and American institutions to permit or to sanction the

action of the Auditor in this case in assuming jurisdiction not only to decide the matter in dispute but also to enforce payment by diverting money in the treasury which has been set aside by law for the use and benefit of the City. In doing so, the Auditor has assumed not only the judicial function but also the legislative function.

2. *The Jurisdiction of the Supreme Court of the Philippine Islands to Grant the Injunction and Writ of Mandamus.*

The jurisdiction of the Supreme Court of the Philippine Islands in this proceeding depends on the answer to the first question. Of course, if the Auditor was vested with jurisdiction to settle and adjudicate a dispute between the City and the Metropolitan Water District and to enforce a settlement by directing payment from the money in the treasury to the credit of the City, the court would be without jurisdiction to restrain him. The question of the Auditor's power is the vital question in the case. If he has the power claimed for him there is nothing more to the case. But if it be found, as a matter of law, that he has no such power as he has claimed, and that his acts are without authority of law, then certainly the court has jurisdiction to restrain him and the other defendants from acting beyond their authority, and to issue a writ of mandamus to require the performance of the duties imposed on them by law, that is, the drawing and countersigning of warrants in favor of the City for the money in the treasury to its credit.

In such cases as this, the jurisdiction of the court depends on whether there is or is not ground for an

injunction or a writ of mandamus. If there is, the court has jurisdiction. If there is not, the court has no jurisdiction. But the defendants whose authority to act in a certain way under the law is challenged cannot come in and evade defending their acts by asserting that the court lacks jurisdiction. Any officer acting beyond his authority under the law may be enjoined upon the application of any one who shows that he is being injured by such unauthorized acts. Likewise any officer who refuses to perform a ministerial duty imposed by law may be required to do so by mandamus.

Noble v. Union River Logging R. R. Co., 147 U. S. 165.
Lane v. *Hoglund*, 244 U. S. 174.

Accounting officers are not exempt from the rule.

Smith v. *Jackson*, 246 U. S. 388.
McCarl v. *Cox*, 8 Fed. (2nd), 669.
Dillon v. Groos, 299 Fed. 851.
Mare v. *Alexander*, 2 Fed. (2nd) 895, 5 Fed. (2nd) 964.
Pence v. *McCarl*, 54 W. L. R. 178.

The suggested appeal to the Governor General from the action of the Auditor, under section 25 of the Act August 29, 1916, is no remedy at all. Such an appeal would necessarily admit that the Auditor had jurisdiction in the first instance, which is the only real issue in the case. If he has no jurisdiction he may be enjoined from acting. If he has jurisdiction there is no case anyway. The only way to test the question of jurisdiction is by resort to the courts.

CONCLUSION

The City being lawfully entitled to the money in the treasury, there set aside as the City's share of the internal revenue collections, and the Auditor's action in fixing a liability on the City, over its insistent and continued protest, and in directing payment out of the fund in the treasury, being without warrant or authority of law,—the Supreme Court of the Philippine Islands rightly enjoined the defendants from diverting the money to the Metropolitan Water District and rightly issued a writ of mandamus to require its payment to the City.

Respectfully submitted,

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